

REMARKS

In the outstanding Office Action, the Examiner rejected claims 11-13 and 18-21 under 35 U.S.C. §101, asserting that the claimed invention is directed to non-statutory subject matter; rejected claims 1-13 and 18-27 under 35 U.S.C. §112, second paragraph, as being indefinite; rejected claims 11-13 and 18-27 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement; rejected claims 1, 8, 11, 22, 25 and 26 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,557,009 to Singer et al. (hereinafter referred to as "Singer et al.") in view of COLA non-patent literature evidence asserted by the Examiner (hereinafter referred to as "NPL evidence"); rejected claims 2-7, 12, 13, 19, 24 and 27 under 35 U.S.C. §103(a) as being unpatentable over Singer et al. in view of NPL evidence, in view of U.S. Patent Application Publication No. 2004/0139053 to Haunschild (hereinafter referred to as "Haunschild") and further in view of U.S. Patent Application Publication No. 2003/0167187 to Bua (hereinafter referred to as "Bua"); rejected claims 9, 10 and 18 under 35 U.S.C. §103(a) as being unpatentable over Singer et al. in view of NPL evidence, in view of Haunschild [*sic* the Examiner has indicated this rejection should be and further in view of U.S. Patent No. 5,590,057 to Fletcher et al. (hereinafter referred to as "Fletcher et al")]; and rejected claim 20 under 35 U.S.C. §103(a) as being unpatentable over Singer et al., in view of NPL evidence, in view of Haunschild and further in view of U.S. Patent No. 6,546,230 to Allison (hereinafter referred to as "Allison").

Claims 1 - 13 and 18 - 27 are pending in this application. Claims 14 - 17 were previously cancelled without prejudice or disclaimer to the contents therein. Claims 2 - 10 and 25, claims 12, 13, 18- 21, and claims 23, 24 and 27, depend, either directly or indirectly, from claims 1, 11 and 22, respectively. Claims 1, 11 and 22 have been amended, for the sole reason of advancing prosecution. Claims 1, 11 and 22 have been amended to more positively recite the claimed subject matter, in accordance with the discussions in the Interview(s) conducted between the Examiner and Applicant's Representative. Applicant, by amending any claims herein, makes no admission as to the validity of any rejection made by the Examiner against any of these claims. Applicant reserves the right to reassert the original claim scope of any claim amended or canceled herein, in a continuing

application.

Support for the claims as amended, appears throughout the specification and claims as originally filed; for example at least on page 19, line 20 to page 20, line 4 of the original specification. It is respectfully submitted that the amendments do not introduce any new matter within the meaning of 35 U.S.C. §132.

Interview Summary

Applicant thanks the Examiner for the courtesies extended to Applicant's Representative during the telephone Interview(s) with the Examiner on October 8, 2009, March 26, 2010, March 30, 2010, and April 5, 2010.

Discussion items included clarification and request for a complete copy of the NPL evidence cited in the Office Action mailed October 5, 2009, clarification regarding the Examiner/Supervisory Patent Examiner/Director Request of Information under 37 CFR 1.105 and an overview of Applicant's claimed subject matter and the claim features in view of the Office Action 103(a) rejections and Request of Information, the Examiner/Supervisory Patent Examiner suggested content and format of Applicant's Response to Request of Information, and the formal rejections under 35 U.S.C. 112 and 101.

With respect to the 35 U.S.C. 112 rejections, the Examiner and Applicant's Representative discussed claim amendments to overcome the rejections in view of the original specification; the Examiner agreed that the proposed amendments overcame the rejections and did not introduce new matter. With respect to the rejection under 35 U.S.C. 101, the Examiner and Applicant's Representative discussed the current Office guidelines with respect to statutory subject matter and upon further review of claim 11, the Examiner indicated that claim 11 is "probably okay at this point [without further amendment]" and requested that Applicant argue and support the recitation of statutory subject matter in the Response to Office Action.

Accordingly, and in view of the Interview(s) and the Examiner's helpful suggestions, Applicant submits a Declaration under 37 CFR 1.132, Information Disclosure Statement and

associated documents to be fully responsive to the Request of Information, claim amendments as agreed upon with the Examiner, and arguments regarding the statutory claimed subject matter herewith. *Applicant invites the Examiner to contact Applicant's Representative should there be any questions or further issues barring the instant application from allowance.*

Claim Rejections under 35 U.S.C. §101

The Examiner rejected claims 11-13 and 18-21 under 35 U.S.C. §101 asserting that the claimed invention is directed to non-statutory subject matter. In particular, the Examiner asserted that “the claimed method does not set forth any ties to any other statutory subject matter do not impose a particular limit on the claim’s scope and the use of the machine involve more than an insignificant extra-solution activity (see argument).” *See* Office Action page 2, item 4. “In this particular case, the examiner content that while one may agree that the limitation of ‘a network access device’ is a tie to another statutory subject matter; the tie of ‘the network access device’ neither impose a particular limit on the claim’s scope nor does the use of the machine involve more than an insignificant extra-solution activity. The limitation ‘causing a graphical user interface to be displayed on network access device’ is not central to the purpose of the method. In this particular case, the method is performing the compliance certification.” *See* Office Action pages 14-15, item 16.

Response

As discussed above, and indicated by the Examiner during the telephone Interview conducted April 5, 2010, “if you have a step where the computer gets the response and processes the response in order to get another assessment question, then you definitely need the computer to perform the function and then [the claimed subject matter features in question are] not [an] insignificant tie or extra-solution activity.” Specifically at least with respect to the claim 11 recitation of “constructing at least one profile of the organization seeking said at least one compliance certification based on said responses to said subset of evaluation questions, said responses from the assessed user to said subset of evaluation questions controlling the display of the assessment questions and ... question

groups contained within the group that ... controls, wherein only assessment questions relative to evaluation questions answered affirmatively, or as being applicable, by the assessed user are presented, wherein only assessment questions relative to evaluation questions answered affirmatively, or as being applicable, by the assessed user are presented,” the Examiner indicated claim 11 is “probably okay at this point [without further amendment]” and requested that Applicant argue and support the recitation of statutory subject matter in the Response to Office Action.

Accordingly, Applicant respectfully submits that at least the above referenced recitation from claim 11 clearly shows that a network access device (or in other words a [non-transitory] computer-readable medium) receives and processes “responses from the assessed user to said... questions [thereby] controlling the display of the [further displayed and presented] assessment questions and ... question groups....” Applicant respectfully submits that such steps of a cause and effect “computer-implemented method... via a graphical user interface on a network access device” further reinforce the statutory subject matter claimed therein, at least because not only does “the tie of ‘the network access device’ ” impose “a particular limit on the claim’s scope,” but also “the use of the machine involve[s] more than an insignificant extra-solution activity.” Furthermore, “[t]he limitation ‘causing a graphical user interface to be displayed on network access device’ ” is significant to the purpose of the method at least in that the graphical user interface is the means by which the user is presented with the questions for response, the user is shown their answered questions and subsequent questions, *presented responsive* to the user’s previous answers and as *processed* by the *network access device* (in each interim step prior to further presentation and/or user response) are displayed.

Thus, in accordance with the understanding of “statutory subject matter” in the post-*Bilski* environment, the claimed subject matter is statutory at least because it “contain[s] sufficient tie to particular apparatus... and the tie to the particular apparatus [is] more than an insignificant extra-solution activity.” Applicant thanks the Examiner for reconsidering and withdrawing the rejection under 35 U.S.C. 101 verbally and respectfully requests a formal indication of the same.

Claim Rejections under 35 U.S.C. §112, second paragraph

The Examiner rejected claims 1-13 and 18-27 under 35 U.S.C. §112, second paragraph, as being indefinite. In particular, the Examiner asserted that “[c]laim 1, 11 and 21 set forth the limitation where ‘... and other question groups contained within the group that it controls.’ The limitation of ‘other question groups’ lacks antecedent basis and the limitation of ‘... within the group that *it* control[’ *sic*] is indefinite since it is not clear what the word ‘it’ correspond to.” See Office Action page 3, item 7.

Response

As discussed above, Applicant has amended the Examiner objected to phrasing of claims 1, 11 and 22 to recite, *inter alia*, “and [[other]] additional evaluation and assessment question groups contained within the group that [[it]] the evaluation question controls.” The Applicant thanks the Examiner for his verbal indication that such amended claim language overcomes the 35 U.S.C. §112, second paragraph, rejection and Applicant respectfully requests the Examiner to formally reconsider and withdraw the rejection under 35 U.S.C. §112, second paragraph.

Claim Rejections under 35 U.S.C. §112, first paragraph

The Examiner rejected claims 11-13 and 18-27 under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. In particular, the Examiner asserted that “[t]he specification provided fails to provide information on how responses from the evaluation question can be used to determine the display of the other question group.” See Office Action page 3, item 8.

Response

As discussed above, Applicant has amended the Examiner objected to phrasing of claims 1, 11 and 22 to recite, *inter alia*, “and [[other]] additional evaluation and assessment question groups contained within the group that [[it]] the evaluation question controls.” The Applicant thanks the Examiner for his verbal indication that such amended claim language overcomes the 35 U.S.C. §112,

second paragraph. Furthermore, Applicant respectfully notes that the previously presented claim language is explicitly supported at least on page 19, line 24 to page 20, line 3 of the original specification filed, and that either the previously presented claim language or the currently amended claim language can be understood in context of the *entire* application and claimed subject matter as originally filed and presently presented. Applicant respectfully requests the Examiner to formally reconsider and withdraw the rejections under 35 U.S.C. §112.

Claim Rejections under 35 U.S.C. §103(a)

The Examiner rejected claims 1, 8, 11, 22, 25 and 26 under 35 U.S.C. §103(a) as being unpatentable over Singer et al. in view of NPL evidence; rejected claims 2-7, 12, 13, 19, 24 and 27 under 35 U.S.C. §103(a) as being unpatentable over Singer et al. in view of NPL evidence, in view of Haunschild and further in view of Bua; rejected claims 9, 10 and 18 under 35 U.S.C. §103(a) as being unpatentable over Singer et al. in view of NPL evidence, in view of Haunschild and further in Fletcher et al.; and rejected claim 20 under 35 U.S.C. §103(a) as being unpatentable over Singer et al., in view of NPL evidence, in view of Haunschild and further in view of Allison.

Response

Applicant thanks the Examiner for his reconsideration and withdrawal of the previously cited 35 U.S.C §102(b) rejection in view of Singer et al. and for his reconsideration and withdrawal of the previously cited 35 U.S.C. 103(a) rejections in view of Singer et al. in combination with Bua, Fletcher et al. and Allison.

Applicant traverses the present rejections since all of the features of the claimed subject matter are not disclosed by the cited references.

To establish a *prima facie* case of obviousness, the Examiner must establish: (1) some suggestion or motivation to modify the references exists; (2) a reasonable expectation of success; and (3) the prior art references teach or suggest all of the claim limitations. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir.

1988); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970). A *prima facie* case of obviousness must also include a showing of the reasons why it would be obvious to modify the references to produce the present invention. *See Dystar Textilfarben GMBH v. C. H. Patrick*, 464 F.3d 1356 (Fed. Cir. 2006). The Examiner bears the initial burden to provide some convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings. *Id.* at 1366.

To show obviousness under §103, it is necessary to show an incentive to benefit from the change. *KSR International Co. v. Teleflex Inc. et al.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007).

"The proper question to have asked was whether a pedal designer of ordinary skill, facing the wide range of needs created by developments in the field of endeavor, would have seen a benefit to upgrading Asano with a sensor. In automotive design, as in many other fields, the interaction of multiple components means that changing one component often requires the others to be modified as well." (*id.* at 127 S.Ct. 1744)

A demonstration of obviousness under §103 requires that the combination represent a design step well within the grasp of a person of ordinary skill in the relevant art. *id.*

"KSR provided convincing evidence that mounting a modular sensor on a fixed pivot point of the Asano pedal was a design step well within the grasp of a person of ordinary skill in the relevant art. (*id.* at 127 S.Ct. 1746)

Overview

Applicant's independent claim 1 sets forth "[a] system for allowing a user to perform an assessment for compliance certification comprising:

- a database storing a plurality of evaluation questions and a plurality of assessment questions,

- wherein the evaluation questions ask for information used to construct profiles of at least one organization, each profile comprising substantive work-function related information of the at least one organization, at least one of the substantive work-function related information selected from the group consisting of: tests performed, specialties, instruments, personnel, and proficiency testing of the at least one organization,*

- wherein the assessment questions ask for information used to determine if said at least one organization meets requirements for at least one compliance certification, and*

wherein subsets of said plurality of evaluation and assessment questions are combined to form a plurality of assessment courses; and

a server, connected to said database via a communications network, having a processor configured to cause a graphical user interface to be displayed to a network access device connected to said server via said communications network;

wherein said processor is further configured to present to an assessed user, as individual personnel of an organization seeking said at least one compliance certification, via said graphical user interface, a subset of evaluation questions comprised by at least one of said plurality of assessment courses,

wherein said processor is further configured to receive responses from the assessed user to said subset of evaluation questions,

wherein said processor is further configured to construct at least one profile of the organization seeking said at least one compliance certification based on said responses to said subset of evaluation questions, said responses from the assessed user to said subset of evaluation questions controlling the display of the assessment questions and additional evaluation and assessment question groups contained within the group that the evaluation question controls, wherein only assessment questions relative to evaluation questions answered affirmatively, or as being applicable, by the assessed user are presented,

wherein said processor is further configured to present to the assessed user, via said graphical user interface, a subset of assessment questions comprised by said at least one of said plurality of assessment courses and corresponding to said at least one profile of the organization seeking said at least one compliance certification, and

wherein said processor is further configured to receive responses from the assessed user to the subset of assessment questions comprising said at least one of said plurality of assessment courses”

(emphases added).

Amended independent claim 11 has been discussed above, and recites “[a] computer-implemented method for allowing users to remotely perform assessments for compliance certification via a graphical user interface on a network access device, comprising the steps of:

storing a plurality of evaluation questions and a plurality of assessment questions,
wherein the evaluation questions ask for information used to construct profiles of at least one organization, each profile comprising substantive work-function related information of the at least one organization, at least one of the substantive work-function related information selected from the group consisting of: tests performed, specialties, instruments, personnel, and proficiency testing of the at least one organization,

wherein the assessment questions ask for information used to determine if said at least one organization meets requirements for at least one compliance certification, and

wherein subsets of said plurality of evaluation and assessment questions are combined to form a plurality of assessment courses;

causing a graphical user interface to be displayed on a network access device, over a communications network, to an assessed user, as individual personnel of an organization seeking said at least one compliance certification;

receiving a selection from said assessed user, via said graphical user interface on a network access device, wherein said selection is indicative of one of said plurality of assessment courses;

presenting to said assessed user, via said graphical user interface, a subset of evaluation questions comprised by at least one of said plurality of assessment courses;

receiving from said assessed user, via said graphical user interface, responses to said subset of evaluation questions;

constructing at least one profile of the organization seeking said at least one compliance certification based on said responses to said subset of evaluation questions, said responses from the assessed user to said subset of evaluation questions controlling the display of the assessment questions and additional evaluation and assessment question groups contained within the group that the evaluation question controls, wherein only assessment questions relative to evaluation questions answered affirmatively, or as being applicable, by the assessed user are presented;

presenting to said assessed user, via said graphical user interface, a subset of assessment questions comprised by said at least one of said plurality of assessment courses and corresponding to said at least one profile of the organization seeking said at least one compliance certification;

receiving from said assessed user, via said graphical user interface, responses to the subset of assessment questions comprised by said at least one of said plurality of assessment courses”

(emphases added).

Applicant's independent claim 22 recites “[a] computer program product comprising a computer usable medium having control logic stored therein for causing a computer to perform assessments for compliance certification, said control logic comprising:

first computer readable program code means for causing the computer to store a plurality of evaluation questions and a plurality of assessment questions,

wherein the evaluation questions ask for information used to construct profiles of at least one organization, each profile comprising substantive work-function related information of the at least one organization, at least one of the substantive work-function related information selected from the group consisting of: tests performed, specialties, instruments, personnel, and proficiency testing of the at least one organization,

wherein the assessment questions ask for information used to determine if said at least one organization meet requirements for at least one compliance certification, and wherein subsets of said plurality of evaluation and assessment questions are combined to form a plurality of assessment courses;

second computer readable program code means for causing the computer to display a graphical user interface, over a communications network, to an assessed user as individual personnel of an organization seeking said at least one compliance certification;

third computer readable program code means for causing the computer to receive a selection from said assessed user, via said graphical user interface, wherein said selection is indicative of one of said plurality of assessment courses;

fourth computer readable program code means for causing the computer to present to said assessed user, via said graphical user interface, a subset of evaluation questions comprised by at least one of said plurality of assessment courses;

fifth computer readable program code means for causing the computer to receive from said assessed user, via said graphical user interface, responses to said subset of evaluation questions;

sixth computer readable program code means for causing the computer to construct at least one profile of the organization seeking said at least one compliance certification based on said responses to said subset of evaluation questions, wherein said sixth computer readable program code means causes said responses from the assessed user to said subset of evaluation questions to control the display of the assessment questions and additional evaluation and assessment question groups contained within the group that the evaluation question controls, wherein only assessment questions relative to evaluation questions answered affirmatively, or as being applicable, by the assessed user are presented;

seventh computer readable program code means for causing the computer to present to said assessed user, via said graphical user interface, a subset of assessment questions comprised by said at least one of said plurality of assessment courses and corresponding to said at least one profile of the organization seeking said at least one compliance certification;

eighth computer readable program code means for causing the computer to receive from said assessed user, via said graphical user interface, responses to the subset of assessment questions comprised by said at least one of said plurality of assessment courses”

(emphases added).

Singer et al. describes “[a] system ... that allows remote, regulated entity users web based access to authorization data, such as permit data in an environmental regulatory permitting or management system. The user can enter, edit and submit permit and compliance data in the

environmental permitting system controlled by a regulating agency in real-time via a web browser over the Internet. The system can also validate submitted information in real-time and allows the user to correct the data. Electronic certification with a unique signature is also performed. Fee payment can be made electronically in real-time through the permitting system with an electronic payments system with a corresponding credit being made to the relevant department general ledger account.” See Singer et al. Abstract.

NPL evidence comprises six pages of printed web pages from the “Internet Archive Wayback Machine” returned for the search term “http://cola.org,” as accessed from an *initial* entry page for “July 21, 2001.” Applicant refers the Examiner to the Declaration under 37 CFR 1.132 for further detailed discussion of the NPL evidence.

Haunschild describes “[a] method and system for perpetually auditing compliance with rules and regulations emanating from government and other regulatory agencies comprising the steps of providing a secured, interactive web site system hosted by at least one computer server, accessibility to the web-based system limited to authorized users. Subject items specific for an authorized user are identified. The subject items preferably comprise facility sites, equipment located at the facility sites and operational activities occurring on the sites, the facility sites, equipment and operational activities being subject to regulatory compliance. R[e]gulatory compliance requirements that are applicable for substantially each identified subject item are then determined. The regulatory compliance requirements are continuously updated for the identified subject items and the status of each of the identified subject items is periodically checked to determine applicability of the regulations. Compliance requirements reports are provided to one or more persons responsible for compliance. To ensure compliance by company personnel, repeated reminders are generated to one or more persons responsible for accomplishing compliance.” See Haunschild Abstract.

Bua describes “systems and methods of determining a performance rating of a health care facility, such as a nursing home or a long term care facility. The systems and methods according to the invention employ customizable scores and weighting factors by which performance data and information are processed to generate a performance rating of a facility, including current and historical ratings. The customizable scores and weighting factors are determined by or based upon a

preferred set of criteria. In one embodiment, the customizable scores and weighting factors used in the methods and systems according to the invention include scores and factors that are indicative of and account for the relative importance of violations and deficiencies of standards of care to a facility's performance rating. The invention further provides computer implemented methods and systems for providing services for user access to data and information related to performance of a health care facility wherein such data and information includes performance ratings determined according to the systems and methods of the invention." *See Bua Abstract.*

Fletcher et al. describes "a system and method for training and certifying a user to perform a task. The system includes an input device, output device and a controller. The controller receives input data from the input device and controls the output displayed on the output device. A supervisor interprets the input data, determines the control data to be sent to the output device and determines log data to be sent to a data storage. A comparator determines if certain log data meets or exceeds a preset limit data to determine certifiability of a user. The system presents a user with a pretest, a module containing instructions, information about a certain portion of the task to be performed, as well as mini-simulations and a variety of questions. A full simulation is presented to the user to apply everything that was learned by the user during that certain module. The system then presents a post-test and, through the comparator, determines if the user is certifiable." *See Fletcher et al. Abstract.*

Allison describes "[a] technique... for testing and training health care professionals. Competency tests are stored on machine readable media and transmitted via network connections to remote provider systems, such as workstations or diagnostic systems. A health care professional can take a competency test on a particular topic and input his/her responses at the remote provider system. The health care professional's responses are evaluated, and an assessment of his/her skills displayed at the provider system. The assessment particularly points out those areas, if any, where the health care professional's knowledge is deficient. If the health care professional has any areas which need improvement, a list of relevant courses is also displayed at the provider system. The health care professional may then select a desired course from the user interface. The machine readable media

maintains a record of the health care professional's assessment as well as a list of completed courses. This information may then be provided to a licensing entity for credit." See Allison Abstract.

Rejection of claims 1, 8, 11, 22, 25 and 26

Applicant fully references and incorporates the discussion regarding Singer et al. from the Response and Amendment under 37 CFR 1.114 filed July 2, 2009 in the U.S. Patent and Trademark Office, where appropriate.

The Examiner has asserted that "the reference database storing a plurality of evaluation question and plurality of assessment question" introduced in Claims 1, 11 and 22 of the presently claimed subject matter is disclosed by Singer et al. (col. 5, lines 55-68).

However, Applicant again respectfully submits that Singer et al. fails to disclose or enable a "database storing a plurality of evaluation question and plurality of assessment question" as presently recited in the claims. Indeed, the cited passage of Singer et al. above fails to discuss any sort of evaluation or assessment question stored, much less a database containing a plurality of such questions.

The Examiner has further asserted that "wherein the evaluation questions ask for information usable to construct profiles of at least one organization" is disclosed by Singer et al. (col. 9, lines 20-30).

Applicant respectfully submits that again, Singer et al. fails to discuss explicit evaluation questions. Instead, the submittal web pages discussed in the cited passage merely consist of form fields for entering standard *contact* or *identification information* (as shown in Figs. 6Ai and 6Aii), similar to those that the applicant would ordinarily complete in paper form but instead, in Singer et al., completes in web form. Thus the 'profile' created in Singer et al. is superficial at best and not derived from answers to evaluation questions, of which there are none. In contrast, the presently claimed subject matter refers to the development of profile(s) regarding the organization or laboratory being assessed for compliance. Page 13, lines 3-9 of the original specification clarify that "[I]n step 208, process 200 constructs a Laboratory Profile by asking a series of evaluation questions. Examples of information collected during step 208 are tests performed, specialties, instruments,

personnel, and proficiency testing. This information is then used in the self-assessment course to determine which (appropriate) questions would be shown to the user. For example, if the specialty of microbiology is not conducted in the laboratory, the user would not be presented (i.e., would not have to answer) any microbiology-related self-assessment questions.” Thus, the specification reinforces the interactive relationship recited in the claims wherein evaluation questions are asked and the answers given by the user are used to construct a profile(s) for the organization or laboratory being assessed.

The Examiner has asserted that “wherein the assessment questions ask for information usable to determine if said at least one organization meet requirements for at least one compliance certification” is disclosed by Singer et al. (col. 8, lines 1-15). The Examiner has further asserted that “wherein subsets of said plurality of evaluation and assessment questions are combinable to form a plurality of assessment courses” is disclosed by Singer et al. (col. 10, lines 33-40). The Examiner has further asserted that “wherein said processor is further configured to present to an assessed user, as individual personnel of an organization seeking said at least one compliance certification, via said graphical user interface, a subset of evaluation questions comprised by at least one of said plurality of assessment courses” is disclosed by Singer et al. (col. 9, lines 20-30) as already discussed above.

Applicant respectfully submits that the cited passages of Singer et al. not only do not disclose or enable “assessment questions” distinct from evaluation questions, but also do not discuss “requirements for at least one compliance certification” and do not discuss “assessment courses” as presently recited in the claims. In the presently claimed subject matter, the evaluation questions are used to construct profile(s) for the organization(s) applying for certification and to determine the (types and number, etc. of) assessment courses that will be displayed for the user from the organization to complete. The assessment courses contain assessment questions that must be answered by the user. In contrast, the cited passages of Singer et al. appear only to allow for the governmental responsible certification official to access a screen 212 to review one or more of the (application(s) for) permits. While Applicant recognizes that the passage in col. 10 of Singer et al. provides for application of the “present invention” “to the creation, electronic certification... of any kind of permit document... for electronic submission,” such a statement does not change the lack of

disclosure or enablement in Singer et al. of many features of the Applicant's claimed subject matter. None of the evaluation questions, assessment questions, assessment courses, or the requirements for certification recited in the present claims are disclosed in the above passages, instead only that *if* the official has reviewed the user's (web forms and data spreadsheet) application *and* desires to certify the permit, electronic means are available for doing so.

The Examiner has asserted that "the reference database storing a plurality of evaluation question and plurality of assessment question" recited in the claims is disclosed by Singer et al. In the last-filed Response, Applicant respectfully submitted that Singer et al. fails to disclose or enable a "database storing a plurality of evaluation question and plurality of assessment question" as recited in the claims. The Examiner has not responded to this.

The Examiner has further asserted that "wherein the evaluation questions ask for information usable to construct profiles of at least one organization" recited in the claims, is disclosed by Singer et al. However, Applicant respectfully submit *again*, that Singer et al. fails to discuss evaluation questions. Instead, Singer et al.'s submittal web pages merely consist of form fields for entering standard *contact* or *identification information*, similar to those that the applicant would ordinarily complete in paper form but instead, in Singer et al., completes in web form. Thus the 'profile' created in Singer et al. is superficial at best and not derived from answers to evaluation questions, of which there are none. In contrast, the presently claimed subject matter refers to the development of profile(s) regarding the organization or laboratory being assessed for compliance. This is clearly supported in the original specification, especially at page 13 and explicitly stated in the claims. Thus, the specification reinforces the interactive relationship recited in the claims wherein evaluation questions are asked and the answers given by the user are used to construct a profile(s) for the organization or laboratory being assessed.

In further contrast, the Examiner has asserted that "wherein said processor is further configured to construct at least one profile of the organization seeking said at least one compliance certification based on said responses to said subset of evaluation questions" is disclosed by Singer et al. (Fig. 3Ci).

As previously discussed, Applicant respectfully submits that Singer et al. fails to disclose or

enable construction of “at least one profile of the organization... based on said responses to... evaluation questions” as substantially recited in the claims. Fig. 3Ci of Singer et al. reinforces the points discussed above, as the figure depicts a screen shot of “Facility Profile” further explained by such text as “Your facility location address and mailing address are displayed” and “You may enter up to three contacts as your Facility Contacts.” Applicant notes that no questions are present on the screen, and the profile that is suggested by this page is superficial, not directed to responses of evaluation questions regarding compliance criterion and could not be used to further determine the assessment questions to be asked for compliance certification, in contrast to the presently claimed subject matter. Applicant respectfully submits that particularly in view of the amendments submitted herein, the claim language does support the depth or the type of information in the evaluation survey, and hence Applicant’s claims clearly recite the questions, requirements and courses necessary to facilitate judgment of compliance certification in the claimed system (in marked contrast to Singer et al.)

Finally, lines 28-38 of Singer et al. describe that not only does Singer et al. merely produce a spreadsheet for data entry, but there is no interaction or enablement of interaction between the user, the server and the resulting spread-sheet in constructing a profile from the user’s answers to evaluation questions. Applicant respectfully submits that Singer et al.’s disclosure of editing/uploading spreadsheets and a central repository is not responsive to evaluation questions as recited in the present claims.

With respect to Singer et al.’s deficiencies, the Examiner has admitted that “[t]he Singer reference do not provide a teaching where the profile comprises of substantive work-function related information at least one of the substantive work-fuction [*sic*] relation information selected from the group consisting of specialties (see COLA reference [“NPL evidence”] page 7 specialties “Chemistry”, “Hematology”, “Microbiology” and etc). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature where the profile comprises of substantive work-function related information at least one of the substantive work-fuction [*sic*] relation information

selected from the group consisting of specialties, as taught by COLA, in order to better define the facilities to be inspected.” See Office Action page 5, second paragraph.

However, Applicant respectfully refers the Examiner to the Declaration under 37 CFR §1.132 and particularly item 21 and 26-29 to refute the Examiner’s assertions in this regard. Applicants respectfully submit that not only is page 7 of the NPL evidence inapplicable to reject the claimed subject matter, due to its creation date of March 2002, clearly after the “one-year bar date” based on the earliest effective filing date of the instant application, but also that *even if* applied, the asserted ‘specialties’ from page 7 of the NPL evidence should only be taken in context as *listed* on an *online form* that can be submitted to apply for a traditional *paper/physical* accreditation. This is in contrast to the claimed features *as a whole* [regarding computer-based user-responsive compliance certification] as discussed above and claimed. In this regard, the NPL evidence is deficient in the same vein that Singer et al.’s submittal web pages are deficient.

Accordingly, NPL evidence, fails to cure the deficiency of Singer et al. of disclosing, “[a] *computer-implemented method* for allowing users to remotely perform assessments for compliance certification via a graphical user interface on a network access device...*wherein the evaluation questions ask for information used to construct profiles of at least one organization, each profile comprising substantive work-function related information of the at least one organization, at least one of the substantive work-function related information selected from the group consisting of: tests performed, specialties, instruments, personnel, and proficiency testing of the at least one organization,*” (emphases added) as claimed, and further is *silent* with respect to the other deficiencies of Singer et al. discussed above. Applicant respectfully notes that the Examiner has applied NPL evidence to teach only the feature cited above in quotation from Office Action page 5.

With respect to Singer et al.’s deficiencies, the Examiner has also admitted that “[t]he Singer reference failed to provide a teaching where the response from the assess user to said subset of evaluation question controlling the display of the assessment question and other questions groups contained with group that it control, wherein only assessment question being applicable by the

assessed user are presented. However, the Haunschild reference provides provide a teaching where the response from the assess user to said subset of evaluation question controlling the display of the assessment question and other question groups contained with group that it control; wherein only assessment question being applicable by the assessed user are presented (see paragraph 21-23). Therefore, it would have been obvious to one of ordinary skilled in the art to include the feature of the response from the assess user to said subset of evaluation question controlling the display of the assessment question and other question groups contained with group that it control, wherein only assessment question being applicable by the assessed user are presented, as taught by Haunschild, in order to format the assessment that is relevant to the current assessment.” See Office Action page 5, third paragraph, continuing to page 6.

As discussed above, the independent claims have been amended to further *explicitly* define the relationship between the evaluation question(s) and subsequent evaluation and assessment questions. Applicant respectfully submits that Haunschild fails to teach, suggest or disclose the claimed subject matter (in either its previously presented or currently amended form) reciting “*said responses from the assessed user to said subset of evaluation questions controlling the display of the assessment questions and additional evaluation and assessment question groups contained within the group that the evaluation question controls, wherein only assessment questions relative to evaluation questions answered affirmatively, or as being applicable, by the assessed user are presented.*” In this regard, Haunschild is deficient in the same vein that Singer et al. alone was deficient.

Accordingly, Haunschild fails to cure the deficiency of Singer et al. of disclosing, “*said responses from the assessed user to said subset of evaluation questions controlling the display of the assessment questions and additional evaluation and assessment question groups contained within the group that the evaluation question controls, wherein only assessment questions relative to evaluation questions answered affirmatively, or as being applicable, by the assessed user are presented*” (emphases added) as claimed, and further is *silent* with respect to the other deficiencies of Singer et al. discussed above. Applicant respectfully notes that the Examiner has applied Haunschild to teach only the feature cited above in quotation from Office Action pages 5-6.

Therefore, Applicant respectfully submits that Singer et al., NPL evidence and Haunschild, whether taken alone or in any combination, fail to support a *prima facie* case of obviousness, at least because Singer et al., NPL evidence and Haunschild fail to disclose “[a] system for allowing a user to perform an assessment for compliance certification...

wherein the evaluation questions ask for information used to construct profiles of at least one organization, each profile comprising substantive work-function related information of the at least one organization, at least one of the substantive work-function related information selected from the group consisting of: tests performed, specialties, instruments, personnel, and proficiency testing of the at least one organization,

wherein the assessment questions ask for information used to determine if said at least one organization meets requirements for at least one compliance certification, and

wherein subsets of said plurality of evaluation and assessment questions are combined to form a plurality of assessment courses; and...

wherein said processor is further configured to construct at least one profile of the organization seeking said at least one compliance certification based on said responses to said subset of evaluation questions, said responses from the assessed user to said subset of evaluation questions controlling the display of the assessment questions and additional evaluation and assessment question groups contained within the group that the evaluation question controls, wherein only assessment questions relative to evaluation questions answered affirmatively, or as being applicable, by the assessed user are presented...”

(emphases added) as recited in independent claim 1, and as similarly recited in independent claims 11 and 22 as indicated above.

Applicant respectfully submits that, at least because of the above reasons, independent claims 1, 11 and 22 and their respective dependent claims are patentably distinguished over Singer et al., NPL evidence and Haunschild, whether taken individually or in combination, and are novel, unobvious and consequently patentable over the cited prior art of record. It is therefore respectfully submitted that the rejections under 35 U.S.C. 103(a) should be withdrawn.

Rejection of claims 2-7, 12-13, 19, 24 and 27; 9, 10 and 18; and 20

Applicant respectfully submits that Bua, Fletcher et al. and Allison fail to cure the deficiencies of Singer et al., NPL evidence and Haunschild discussed above with respect to the

claimed subject matter in accordance with Applicant's independent claims 1, 11 and 22 and further, do not suggest a teaching or motivation to reach such subject matter as claimed in the instant application, whether individually or in combination. It is at least for these reasons that the cited references (Singer et al., NPL evidence, Haunschild, Bua, Fletcher et al., and Allison) fail.

Therefore, it is submitted that independent claims 1, 11 and 22 and all the claims depending therefrom are unobvious over the cited prior art of record, whether taken alone or in any combination.

It is therefore respectfully submitted that the rejections under 35 U.S.C. 103(a) should be withdrawn.

Request of Information under 37 CFR 1.105

The Examiner, Supervisory Patent Examiner and Director required the Applicant and the Assignee of the instant application to "provide the following information that the examiner has determined is reasonably necessary to the examination of this application...." See Office Action page 14, item 17 to page 15, item 24 (confirmed by the Examiner as erroneously repeated on page 15, item 25 to page 17, item 32 – there is only one Request of Information that the Applicant and Assignee needs to respond to).

Response

Applicant refers the Examiner to the Declaration under 37 CFR 1.132 (executed by the Applicant, also authorized representative of the Assignee), Information Disclosure Statement and associated documents submitted herewith as a full and complete Response to the Request of Information under 37 CFR 1.105 of the Office Action mailed October 5, 2009. Applicant thanks the Examiner for his remarks regarding the purpose of the Request, suggested items to include (that the Examiner wished to see) in the Request and format of the Request. Applicant invites the Examiner to contact Applicant's Representative should any questions or issues be outstanding following receipt of this Response submission.

CONCLUSION

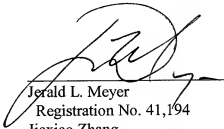
In light of the foregoing, Applicant submits that the application is in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicant respectfully requests that the Examiner call the undersigned.

Respectfully submitted,

THE NATH LAW GROUP

April 5, 2010

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A handwritten signature in black ink, appearing to read 'Jerald L. Meyer', is written over a horizontal line.

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